U.S. Senate
Republican Policy
Committee

Larry E. Craig, Chairman
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Legislative Notice

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Campaign Reform Proposals

NOTEWORTHY

- By unanimous consent, the Senate will turn to the Majority Leader's campaign finance bill (see below) today, Monday, February 23 at 3:00 p.m.

- By a unanimous consent agreement of October 30, 1997, (1) the Majority Leader or his designee will introduce a bill regarding campaign finance reform. (2) Thereafter, Senator McCain will be recognized to offer the first amendment. That amendment will be in the nature of a substitute and will be the text of S. 25, as modified by Senator McCain on September 29, 1997. (3) No amendments will be in order to the McCain amendment prior to a motion to table. (4) If the amendment is not tabled, the amendment itself and the underlying bill will be open to further amendments, debate, and motions.

- Last fall, the Senate had five cloture votes related to S. 25, the McCain-Feingold bill. On each occasion, the Senate fell well short of the 60 votes necessary to end debate. On two votes, the Senate refused to invoke cloture on the Lott-Nickles Paycheck Protection Amendment although 95 percent of Republicans voted for cloture. On the underlying bill itself, at least 85 percent of Republicans voted against cloture. However, on all five votes all Democratic Senators voted together [see "Background" below].

- The Majority Leader's bill, the "Paycheck Protection Act," protects every worker's paycheck from dues or fees that will be used for political activities *unless* the worker first gives written, voluntary authorization for such dues or fees.

- S. 25 bans "soft money" in Federal elections, restricts independent expenditures, mandates greater disclosure, and makes numerous other changes. It also contains a provision that purports to codify the *Beck* decision, but longtime friends of *Beck* say it is woefully inadequate (or worse) [see "McCain-Feingold's *Beck* Provisions" below].

BILL PROVISIONS

Senator Lott's Paycheck Protection Act

The Paycheck Protection Act would:

- forbid corporations and unions from taking money from employees and then using that money for political activities — unless the employee first gives express, written consent for such political uses;

- define "political activities" to include carrying on propaganda, attempting to influence legislation, and intervening in any political campaign or political party (this definition is derived from §501(c)(3) of the Internal Revenue Code); and

- allow the authorization to remain in effect until revoked but may be revoked at any time.

The Paycheck Protection Act is premised on the simple, all-American truth that money must *not* be taken from a person and put to political purposes unless that person gives consent. It was Thomas Jefferson who declared that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."

The Paycheck Protection Act does *not* "codify" the decision of the United States Supreme Court in *Communication Workers of America v. Beck*, 487 U.S. 735 (1988). The bill does, however, address some of the issues that were raised in *Beck*. The bill is a simple, necessary fence that keeps corporations and unions away from workers' pocketbooks — unless the workers have given their consent.

Current law can be difficult and confusing. For example, many workers have money taken from them without their consent and then they must petition to get it back. This bill is a proactive, pro-worker initiative that will help individuals regain control of their own paychecks — and of their own political convictions.

The McCain-Feingold Campaign "Reform" Bill

Summarized below are the major provisions of S. 25, the McCain-Feingold bill, as modified on September 29, 1997. The modified bill has been printed, and it can be found on pages S 10106-112 of the Congressional Record of that date.

Title I of S. 25 bans "soft money" (money raised and spent outside of the limits of Federal election law) for national political parties. Under the bill, no national committee of a political party (including congressional campaign committees) may receive or spend any funds that are not subject to the "limitations, prohibitions, and reporting requirements" of the Federal Election Campaign Act (FECA). The same rule applies to state and local committees; that is, they are prohibited from spending soft money for any "Federal election activity." The term "soft money" is defined in the bill as:

- voter registration activity within 120 days before a federal election;
- voter identification, get-out-the-vote activity, or general campaign activity conducted in connection with any election that includes a candidate for federal offices [generally referred to as "party-building activity"]; and
- a communication that refers to a clearly identified candidate for federal office and that is made for the purpose of influencing a federal election, regardless of whether the communication contains express advocacy [this would appear to include multi-candidate brochures which include local and federal candidates and/or local party sample ballots].

State and local parties would be able to use soft money for state electioneering, as allowed by state law, including contributions to (and campaign activities conducted solely on behalf of) candidates for state or local office; and costs of state, district and local party conventions and the nonfederal share of party administrative and overhead expenses.

Also, the bill raises the aggregate hard money contribution limit for individuals from $25,000 to $30,000.

The bill further expands FECA by: providing that fund-raising costs of state and local parties for "federal election activity" are subject to federal campaign law; prohibiting state and national parties from making solicitations for, or donations to, tax-exempt organizations; and prohibiting candidates for federal office from soliciting, receiving or spending soft money (these provisions are all in section 101).

Title II of S. 25 broadens the definition of "express advocacy" in order to regulate expenditures for political communications which currently do not fall under federal election law authority because they do not use *express* terms (such as "vote for" or "vote against") to advocate the election or defeat of a candidate. The McCain-Feingold bill purports to draw a new "bright line" between issue ads and independent expenditures (which are paid for with hard money out of federally regulated PACs). Under McCain-Feingold, communications that: (1) "in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates" or, (2) refer to a candidate in a paid broadcast advertisement within 60

days of the election, or (3) express "unmistakable and unambiguous support for or opposition to one or more clearly identified candidates when taken as a whole and with limited reference to external events, such as proximity to an election," would be subject to FECA. The bill provides an exemption for voting records and voting guides from its definition of express advocacy, but with strict provisos on allowable content.

Section 204 places an additional prohibition on national and state committees: Once the party nominates a candidate, **the committee shall not make both coordinated and independent expenditures** with respect to the candidate during the election cycle. Section 205 defines what constitutes **"coordination"** with a candidate.

[**NOTE:** Many citizens' organizations have expressed strong opposition to Title II of "McCain-Feingold." For example, in a letter of January 28, 1998, the Christian Coalition urged Senators to vote against S. 25 because "this legislation essentially requires that if a citizen or group plans to advocate positions or report on votes that candidates have [cast], they must operate as a PAC and comply with all the regulatory burdens that go with it. More governmental control over what is said and how it is said is not what campaign finance reform should be about." The National Right to Life Committee (NRLC) sent a letter to Senators on February 17, 1998, stating that sections 201 and 205 of McCain-Feingold "would radically expand the definition of the key legal terms 'expenditure', 'contribution', and 'coordination', so as to effectively ban incorporated citizen groups or unions from engaging in many constitutionally protected lobbying and issue-advocacy activities *at any time of the year*" (emphasis is theirs). NRLC also labels the exception for voter guides and scorecards as "bogus."]

Title III addresses disclosure by providing for regulations to require greater use of electronic filing of FEC forms using computers and facsimile machines. It also requires the FEC to make electronic reports available on the Internet within 24 hours of their receipt. The bill also provides for random post-campaign audits and investigations (if a majority of the FEC agrees) in order to ensure compliance with campaign laws, and extends the period during which the FEC may begin an audit. Also, the bill amends FECA with respect to identifying the source of advertisements, and mandates that the campaign provide the name, address and occupation of all donors of contributions above $200 (under current law, they must make a best effort to obtain the complete information). Further, it provides additional reporting requirements for independent expenditures for amounts aggregating $10,000 or more (section 203), and soft money disbursements of persons other than political parties (section 307).

Title IV bars political parties from making "coordinated expenditures" on behalf of a Senate candidate who does not agree to limit his or her personal spending (including funds of the candidate's immediate family) to $50,000 per election.

Title V makes it an "unfair labor practice" for a labor organization not to provide an "objection procedure" for non-union employees so that they may request a refund of the portion of their agency fees used for political activities.

[**NOTE:** Unlike the Lott-Nickles Paycheck Protection Amendment, McCain-Feingold does not apply to labor union members, does not apply paycheck protection requirements to corporations, and does not make failure to do so a violation of federal campaign law. For a fuller discussion of this issue, see "McCain-Feingold's *Beck* Provisions," below.]

Also, S. 25 codifies recent FEC regulations that prohibit the **use of campaign funds for purposes that are inherently personal,** and prohibits a Senator or Representative from **using the frank for mass mailings during an election year** unless the member is not running for re-election.

Title V also addresses **fund-raising on federal property** by amending Title 18 of the U.S.C. to say, "It shall be unlawful for any person to solicit or receive a donation of money or other thing of value for a political committee or a candidate for Federal, state or local office from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States." Section 506 addresses **contributions and donations by foreign nationals** and Section 507 provides for a **prohibition of contributions by minors.**

Title VI provides for expedited review of constitutional issues and sets **the effective date** for 60 days after the date of enactment.

ADMINISTRATION POSITION

The Administration "strongly supports" S. 25, as modified, and "strongly opposes any amendments which would undermine campaign finance reform." This latter statement refers specifically to the Paycheck Protection Act which the Administration opposes.

BACKGROUND

Campaign finance reform is one of the more contentious and difficult issues that Congress faces. The difficulties are caused by a knotty combination of partisanship; competition between incumbents and challengers; the tension between free speech and free association and orderly elections; and the connection between money and communicating which is especially important for a vast republic in an electronic age.

Recent Votes

In recent years, the Senate and the House of Representatives have had dozens of votes on campaign finance "reform." The more recent examples are sketched below.

During this Congress, the **105th**, the Senate has had five cloture votes:

On vote No. 266 (Oct. 7, 1997), **the Senate failed to invoke cloture on the Paycheck Protection Act**; the vote was 52 to 48, with 95 percent of Republicans voting to invoke cloture, and joined by no Democrat. On vote No. 274 (Oct. 9), the result was identical (the vote was 51 to 48).

On vote No. 267 (Oct. 7), **the Senate failed to invoke cloture on the underlying bill, S. 25 as modified**. The vote was 53 to 47 with 85 percent of Republicans (and no Democrat) voting against cloture. Second and third cloture attempts also failed (votes 270 and 273 on Oct. 8 and Oct. 9) with 52-to-47 votes both times. On all five 1997 cloture votes, the Democrats voted en bloc.

In the **104th Congress**, the Senate failed to invoke cloture on an earlier version of the McCain-Feingold bill (S. 1219) by a vote of 54 to 46 (vote No. 168, June 25, 1996). Eight Republicans (five of whom serve in this Congress) joined 46 Democrats in supporting cloture.

In the **103d Congress,** both the Senate and the House passed campaign finance bills (S. 3 / H.R. 3), but no bill was ever presented to the President. In the Senate, final passage came after some 35 roll call votes on amendments. Seven Republicans joined 53 Democrats in passing the bill on June 17, 1993. However, more than a year later, the majority twice was unable to obtain cloture on a motion to request a conference. (About 90 percent of Republicans voted against cloture on the motions to request a conference.) At the end of the 103d Congress, the bills died — to the relief of most Republicans who believed that the proposals were a partisan power grab.

In the **102d Congress,** after another partisan struggle, a bill (S. 3) was presented to President Bush. He vetoed it. The veto message repeated several Republican themes on campaign finance reform. President Bush said the bill "perpetuat[ed] the corrupting influence of special interests and the imbalance between challengers and incumbents." He said the bill "limit[ed] political speech protected by the First Amendment and [would] inevitably lead to a raid on the Treasury to pay for the act's elaborate scheme of public subsidies." It is widely believed that no bill would have made its way to the President's desk if majorities in the 102d Congress had believed that President Bush would actually sign it.

Views of Senator McCain

The following is an excerpt from Senator McCain's statement in the *Congressional Record* of September 26, 1997:

> "The Senate now begins a debate that will determine whether or not we will take an action that most Americans are convinced we are utterly incapable of doing — reforming the way we are elected to office. Most Americans believe that Members of Congress have no greater priority than our own reelection. Most Americans believe that every one of us — whether we publicly advocate or publicly oppose campaign finance reform — is working either openly or deceitfully to prevent even the slightest repair to a campaign finance system that they firmly believe is corrupt. Most Americans believe we will let this Nation pay any price, bear any burden to ensure the success of our personal ambitions — no matter how dear the cost might be to the national interest.
>
> "Now is the moment when we can begin to persuade the people that they are wrong. Now is the moment when we can show the American people that we take courage from our convictions and not our campaign treasuries.
>
> "I am a conservative, and I believe it is a very healthy thing for Americans to be skeptical about the purposes and practices of public officials and refrain from expecting too much from their Government. Self-reliance is the ethic that made America great, not consigning personal responsibilities to the state.
>
> "I would like to think that we conservatives could practice the self-reliance which we so devoutly believe to be a noble public virtue, and rely on our ideals and our integrity to enlist a majority of Americans to our cause, rather than subordinate those ideals to the imperatives of fund-raising. I would like to think the justice of our cause, the good sense of our ideas, will appeal to a majority of Americans without the need to fund that appeal with obscene amounts of money.
>
> "I am a conservative, and I believe that a conservative's primary purpose in public life is to give Americans a Government that is less removed in style and substance from the people, and to help restore the public's faith in an America that is greater than the sum of its special interests. That, I contend, is also the purpose of meaningful campaign finance reform. . . .
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> "I want to stress the purposes upon which this legislation is premised: First, for reform to become law, it must be bipartisan. Second, genuine reform must lessen the amount of money in politics: as the need for money escalates, the influence of those who give it rises exponentially. Third, reform must level the playing field between challengers and incumbents."

Views of Senator McConnell

Senator McConnell is a leading opponent of S. 25. The following is excerpted from his article in *National Review* of June 30, 1997:

> "The McCain-Feingold bill seeks to quiet the voices of candidates, private citizens, groups, and parties. Why? Because, it is said, 'too much' is spent on American elections. The so-called reformers chafe when I pose the obvious question: *'compared to what?'*
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> "In 1996 — an extraordinarily high-stakes, competitive election in which there was a fierce ideological battle over the future of the world's only superpower — $3.89 per eligible voter was spent on congressional elections. May I be so bold as to suggest that spending on congressional elections the equivalent of a McDonald's 'extra value' meal and a small milkshake, per eligible voter, is not 'too much?'
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> "The reformers are not dissuaded by facts. Their agenda is not advanced by reason. It is propelled by the media, some politicians, and the recent infusion of millions of dollars in foundation grants to 'reform' groups. Fortunately, the majority of this Congress is not ideologically predisposed toward the undemocratic, unconstitutional, bureaucratic finance scheme embodied in McCain-Feingold. . . .
>
> "My goal is to redefine 'reform,' to move the debate away from arbitrary limits and toward expanded citizen participation, electoral competition and political discourse. McCain-Feingold is a failed approach to campaign finance that has proven a disaster in the presidential system. McCain-Feingold would paper over the presidential spending limit system's fatal flaws and extend the disaster to Congressional elections. Experience argues for scuttling it entirely.
>
> "The best way to diminish the influence of any particular 'special interest' is to dilute their impact through the infusion of new donors contributing more money to campaigns and political parties. Those who get off the sidelines and contribute their own money to the candidates and parties of their choice should be lauded, not demonized. The increased campaign spending of the past few elections — a cause and effect of increased competition — should be hailed as evidence of a vibrant democracy, not reviled as a 'problem' needing to be cured.
>
> "My prescription for reform includes contribution limits adjusted, at the least, for inflation. The $1,000 individual limit was set in 1974 when a new Ford Mustang cost just $2,700. The political parties should be strengthened; the present constraints on what they can do for their nominees, repealed. These would be steps in the right direction."

OTHER VIEWS

The following papers have been issued by the Policy Committee during the 105th Congress. They are available on RPC's homepage, on the Trunk Line, and in room SR-347.

2-6-98	*Broncos & Packers, Senators & Representatives: Are We Spending Too Much on Politics?*
10-2-97	*Citizens' Groups Alarmed by McCain-Feingold: S. 25 Obliterates High Court's "Bright Line" Speech Protection Standard*
10-1-97	*S. 25 Provides Neither Paycheck Protection Nor* Beck *Codification: McCain-Feingold's* Beck *Provision versus Paycheck Protection*
10-1-97	*S. 25 — McCain-Feingold Campaign Finance Bill* Legislative Notice
9-5-97	*How Campaign "Reform" Might Have Turned Out: Thankfully, the Constitution Stands in the Way*
9-3-97	*Congress Most Vulnerable Constitutionally When Regulating Speech: How Much Campaign "Reform" Will the Constitution Tolerate?*
9-2-97	*What is at Stake for the Left and the Right (and the Middle): Does "Campaign Reform" Mean "Control"?*
7-31-97	*$135 of Brochures Brings FEC Lawsuit: Should Pamphleteers Be Licensed?*
5-13-97	*Are We Spending Too Much to Elect Congress? Advertising Costs and Congressional Campaigns*
5-1-97	*Democrats May Offer FEC Funding Amendment to Supplemental: Appeals Court Orders FEC To Pay Attorney's Fees In Free Speech Case*
4-10-97	*Putting Campaign Spending into Context: Are We Spending Too Much . . . ?*
3-24-97	*Campaign Reform and the Dispersion of Power: The Parable of the Wise and Foolish Rulers*
3-13-97	Buckley *in a Nutshell: Notes on the Constitutional Law Regulating Political Contributions and Political Expenditures*

POSSIBLE AMENDMENTS

Snowe: To amend title II of McCain-Feingold with respect to communications made during elections, including communications made by independent organizations.

Lieberman: By "Dear Colleague" letter of February 11, Senator Lieberman gave notice that he expects to offer two amendments: the first would tighten the rules in presidential elections so that candidates who agree to accept public financing (and spending limits) would be restricted in their ability to raise and spend "soft money." The second amendment would make it more difficult for tax-exempt organizations to engage in political activities.

Other amendments are possible.

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McCain-Feingold's *Beck* Provisions

The *Beck*-related provisions of the McCain-Feingold bill bear little resemblance to the kind of codification language that friends of *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), have been pushing for years. The McCain-Feingold bill contains none of the key provisions that were found in the 1993 Dole campaign finance bill (S. 7) or in the 1997 Nickles Paycheck Protection Act (S. 9) or in the 1997 Lott Paycheck Amendment to S. 25. The following points were made in an RPC paper dated October 1, 1997:

- **The McCain-Feingold provisions apply only to workers who are not members of a union.** These are workers who choose not to join a union, but who, under Federal law and a collective bargaining agreement, must pay dues ("agency fees") to support the costs of union representation. S. 25, therefore, covers only 10 percent of the roughly 18 million dues-paying employees nationwide. The Paycheck Protection Act, on the other hand, covers all 18 million.

- **The McCain-Feingold provisions put an unfair burden on employees.** S. 25 requires employees to file a written *objection annually* in order to protect their dues. By contrast, the Paycheck Protection Act requires unions to obtain each individual employee's written permission before using any portion of his or her dues for political activities.

- **The McCain-Feingold provisions adopt questionable enforcement practices.** Despite its extremely poor record of enforcing *Beck* rights, S. 25 gives enforcement responsibilities to the National Labor Relations Board.

- **The McCain-Feingold provisions create legal loopholes and then codify them.** S. 25's definition of allowable political activities may give labor organizations *greater legal protection* for using compulsory dues and fees for lobbying and political activities than they now enjoy. The bill's prohibition against "political activities unrelated to collective bargaining" does not provide a practical or enforceable standard given the scope and variety of collective bargaining issues. Moreover, S. 25 permits unions to continue using compulsory dues for such things as lobbying on judicial and executive branch nominees, lobbying for and against ballot propositions, and conducting issue advocacy campaigns.